That Delusive Parallel Between Vietnam and Cuba, P. 4

Morse Tells Senate That Johnson Is More Belligerent In Asia Than Ike Was

"President Johnson's comments in San Francisco about our Asian policy grossly overstepped his moral and legal rights. His reference to an "offensive pursuit of peace based on overwhelming military power" is as artful a piece of double-talk as has been uttered in the Cold War. No President is alone entitled to threaten war or to commit the United States to war. . . .

"The President's lamentable excuse is said to be that the Southeast Asia Treaty Organization gives him all the power he needs. He should read the Treaty again. It makes no provision for war by the Organization as a whole, much less the United States acting alone. It calls for nothing more than consultation. . . .

"President Johnson is making the United States the world's leading threat to world peace, and he will discredit himself and his Administration in the eyes of history if he leaves our people the legacy of a unilateral war in Asia. Even President Eisenhower declined in 1954 to commit this country to a unilateral war in Indo-China, unsupported by allies or a specific mutual defense treaty. . . .

"The only possible result of such an American adventure would be that the United States would do Russia's "job" on China, leaving the Soviet Union free from confinement on both her borders. I cannot imagine a greater service the United States could do the Soviet Union than to whittle down her Chinese adversary at a huge and bloody cost to ourselves."

—Sen. Morse, in the Senate, June 22.

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Judicial Sustenance for the Southern Racist

Justices Black, Harlan and White have done the country a double injury by their dissent in the sit-in cases. The majority decisions, by one device or another, found it possible to reverse or remand the convictions without passing upon the fundamental issue, which is whether the States may under the 14th Amendment *in any way* enforce racial discrimination in public accommodations. The case which Black, Harlan and White made their main battle ground was *Bell v. Maryland,* which involved 12 Negro students convicted of criminal trespass for a restaurant sit-in in Baltimore in 1960. Since that time both the City of Baltimore and the State of Maryland have passed public accommodations laws. Under these laws what the students did is no longer a crime. The majority, speaking through Mr. Justice Brennan, therefore vacated the judgments against them and remanded to the State courts for such action as may now seem justifiable under the State law as changed.

A Mischief-Making Dissent

At this moment in our national history, when Congress is in the final stage of passing the first public accommodations law since the Civil Rights Act of 1875, there was good grounds for restraint in the Court. If it could not muster a majority clearly to affirm the right to equality then it was wiser to postpone the issue, especially when there were sound legal grounds for doing so. The risk otherwise was to throw doubt in advance on the constitutionality of the new statute by a split within the high Court itself and thus to cast a baneful influence into the scales wherever public opinion is precariously poised between resistance and compliance. It was mischievous of Black, Harlan and White to open the question up and to open it in such a way as inevitably to give emotional support to mass resistance. "We fully recognize," Black wrote apologetically for the dissenters, "the salutary general judicial practice of not unnecessarily reaching out to decide constitutional questions. But this is neither," he quickly added, "a constitutional nor a statutory requirement." So off they went, in an opinion which sounded as if it were written by David Lawrence.

They protected themselves in the small print, of course. They said they were not passing on the constitutionality "of any existing or proposed state or federal legislation." In his oral, as in his written text, Mr. Justice Black was careful to say that he meant only that the 14th Amendment did not *of itself* and without Congressional legislation, prohibit denial of public accommodations to Negroes. These fine points will not protect the country from the bigots who will now say, "Why even Black. . . ." The whole emotional coloration of the Black dissent is on the side of the aggrieved white Southerner, not his Negro victim. He waded in with joyous abandon on the side of Harlan and White, with whom he otherwise rarely agrees. For Harlan property rights have always been a No. 1 consideration; he has always subordinated

(Continued on Page Two)

The Right to Travel Decision

Practically the Supreme Court's decision upholding the right to travel is a victory. Philosophically it's a disappointment. It leaves loopholes that may prove dangerous in the future. Practically, it is another blow at the Internal Security Act, a thought control measure fathered by Mundt and Nixon in the Fifties. It holds that Section 6 of that Act, in denying passports to members of Communist organizations or "fronts" is unconstitutional because it "too broadly and indiscriminately restricts the right to travel and thereby abridges the liberty guaranteed by the Fifth Amendment." But this implies that a more carefully drawn statute might command a majority on the Court. Only Mr. Justice Douglas firmly upholds the right to travel (see box bottom of p. 3); even Black, while condemning the Internal Security Act altogether says that Congress has "broad powers to regulate the issuance of

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A State With A Color Line Can't Suddenly Claim It's Color Blind

civil rights to them. But this was a new stance for Black.

The 13th, 14th and 15th Amendments were intended to free the Negro from slavery and give him first class citizenship. The Southern States sought to circumvent them first by the Black Codes and then by Jim Crowism. In this they were aided by Supreme Court decisions which read the 14th amendment so narrowly as to take the heart out of the first Civil Rights Act. Their spirit lives on in the Black-Harlan-White dissent. Here is a sample of its question-begging formulations. The 14th Amendment, it says, "does not forbid a State to prosecute for crimes committed against a person or his property, however prejudiced or narrow the victim's views may be." Of course not. But is it a crime for a Negro to try and buy a meal at a lunch counter which otherwise serves the public? "Nor," they go on, "can whatever prejudice and bigotry the victim of a crime may have be automatically attributed to the State that prosecutes." Not automatically, of course. But the records of these cases is full of testimony that restaurant and hotel owners refuse service to Negroes not because of their own prejudices but because they fear those "local customs" the Southern States foster.

Hardly "Past History"

The Solicitor General, in a brilliant supplemental brief *amicus*, argued that "a State which has drawn a color line may not suddenly assert that it is color blind." Black argues that if this were accepted "we would have one 14th Amendment for the South and quite a different and more lenient one for other parts of the country." It is not the 14th Amendment which is more "lenient" in the North. It is the North which is far less harsh and brazen than the South about defying the Amendment. Black complains that to infer State responsibility where there is racial bias in public accommodations would leave constitutional rights to be "governed by past history in the South—by present conduct in the North and West." Surely these Justices do not think racial discrimination in the South is merely a matter of "past history?"

It is the standard Southern answer, to say as the dissenters do, that "the 14th Amendment of itself does not compel either a black man or a white man running his own private business to trade with anyone against his will." This is a tissue of invidious misstatement. The 14th Amendment can and should be read as part of the public policy of this country, which is against racial discrimination. What a man does in his "private business" may be his own affair. But where he has a business which opens its doors to all comers then he cannot deny entrance or service to some solely because of their race. When he does so, he cannot under the 14th Amendment have State support in the shape of police and judicial action to enforce the discrimination via "criminal trespass." Nor can States which have done all they could to maintain the Negro in subjection then come into court and claim that they are merely enforcing property rights. This was the argument of the Solicitor General and of counsel for the sit-in demonstrators.

The Choice The 14th Amendment Made

"In granting Negroes citizenship and the equal protection of the laws, it was never thought that the States could permit the proprietors of inns and public places to restrict their general invitation to the public and to citizens in order to exclude the Negro public and Negro citizens. . . . A fundamental assumption of the 14th amendment was that the States would continue, as they had for ages, to enforce the right of citizens freely to enter public places. . . . The dissent would hold in effect that the restaurant proprietor's interest in choosing customers on the basis of race is to be preferred to the Negro's right to equal treatment by a business serving the public."

—Mr. Justice Goldberg, with Chief Justice Warren and Mr. Justice Douglas in Bell v. Md.

Of course it is not easy, in this as in other basic questions of constitutional law, to find clear answers to present problems in the debates and intentions of its framers. But Black in other cases has not hesitated to pour new wine into the old bottles. However obscure the details may be, the main lines are clear. The South has been engaged for a century in attempting to nullify the Negro's emancipation. It has done its best, in the vivid phrase of the first Mr. Justice Harlan, this one's grandfather, to turn the 13th, 14th and 15th amendments into "splendid baubles, thrown out to delude those who deserved fair and generous treatment at the hands of the nation." Those words are from a dissent in 1883 which at last is being made the law by the Civil Rights Act of 1964. Congress is thereby reversing the Supreme Court. Goldberg, Warren and Douglas would have had the Court, too, reverse that 1883 decision on public accommodations. Mr. Justice Douglas felt that the Court dodged its duty in not doing so. He asked scornfully, "how is a 'personal' right infringed when a corporate chain store, for example, is forced to open its lunch counters to people of all races?" He put the issue unanswerably when he wrote:

Segregation of Negroes in the restaurants and lunch counters of parts of America is a relic of slavery. It is a badge of second class citizenship. It is a denial of a privilege and immunity of national citizenship and of the Equal Protection guaranteed by the 14th Amendment against abridgement by the States. When the state police, the state prosecutor and the state courts unite to convict Negroes for renouncing that relic of slavery, the 'state' violates the 14th amendment.

It is tragic at this moment, when the strongest kind of stand is necessary to avoid bloodshed, that the Supreme Court did not do its duty and take that unequivocal position.

The Bitter Protest From Douglas Against The Court's Dodging Of The Issue

"On this last day of the Term, we studiously avoid decision of the basic issue of the rights of public accommodation under the Fourteenth Amendment, remanding the case to the state court for reconsideration in light of an issue of state law. . . .

"The whole Nation has to face the issue; Congress is conscientiously considering it; some municipalities have had to make it their first order of concern; law enforcement officials are deeply implicated, north as well as south; the question is at the root of demonstrations, unrest, riots, and violence in various areas. The issue in other words consumes the public attention. Yet we stand mute, avoiding decision of the basic issue by an obvious pretense."

—Justice Douglas's Separate Opinion in Bell v. Md.

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Court Implies State Dept. May Put Iron Curtain Around "Sensitive" Areas

(Continued from Box on Page 1)

passports under its specific power to regulate commerce with foreign nations." Congress also has power to regulate interstate commerce. Would that give it power to require passports between one State and another?

There were three passport decisions.* Two non-Communists, who refused to take a non-Communist oath on principle, had been denied passports. The denials had been upheld in the Courts of Appeals. Without opinion and with only Clark, Harlan and White dissenting, the Court ordered these lower court orders vacated in the cases of Milton S. Mayer and of Vincent Copeland, the former a well-known writer and lecturer of pacifist inclination; the latter, editor of *Workers' World*.

No Dodges Available

The Court's opinion was handed down in appeals refreshingly free from subterfuge. They were brought by Elizabeth Gurley Flynn, chairman of the Communist Party, U.S.A., and Herbert Aptheker, editor of its theoretical organ, *Political Affairs*. The Court could not dodge the issue by declaring party membership unproven. It had to decide the right of indubitable Communists to travel. This eliminated the familiar question-begging procedural and evidentiary detours. The advantage of a decision upholding the right of known party members to travel is that it lifts from other radicals and liberals the onus of proving themselves politically antiseptic to get a passport.

But the majority's reasoning was not as clear-cut as the cases. No doubt this was due to the difficulty of finding a common denominator for agreement, but this only shows how few members of the Court are willing to uphold the right to travel with no strings attached. Mr. Justice Goldberg for the majority objected to Section 6, the passport section, of the Internal Security Act on the ground that it applies to travel by a member of a registered organization "regardless of the security-sensitivity of the area in which he wishes to travel." Even were he to apply for a passport "to visit a relative in Ireland, or to read rare manuscripts in the Bodleian Library of Oxford University, the applicant would be guilty of a crime." (The Act makes it a crime merely to *apply* for a passport, if a member of a proscribed organization).

We don't like the implications. It implies that to travel one must explain one's purposes, to say one is only going to visit a maiden aunt in Killarney or to check Chaucer's spelling. The right to travel is not secure if one's motives and journeys have to be explained. Above all, we dislike the reference to "the security-sensitivity of the area" in which one wishes to travel. This plays directly into the State Department's hands. It can no longer deny passports to individuals. But it still shuts off travel to whole countries and areas in its own "Papa knows best" fashion.

Travel has become a weapon in its hands, of reprisal against the tourist trade of countries like Cuba and of an Iron Curtain against countries it does not wish to recognize. North Korea, China, North Vietnam and Albania—all accessible to visitors and journalists from every other Western country, are off-bounds to us. The dangerous ignorance this may develop is all too apparent in the current Far Eastern crisis. In two obscenity cases, one involving a movie, the other sexy books, Black joined Douglas in asserting that under the First Amendment there is no right to censor in this country. By doing so he cut through a lot of nonsense which is turning the Nine Old Men (as we used to call them in the 30's) into a general board of censorship over pictures and books unfit for their venerable eyes. Why can't Black be as forthright about the right to travel?

*** The Court in another Internal Security Act case also granted an appeal by the Veterans of the Abraham Lincoln Brigade from a Subversive Activities Control Broad registration order.**

How "Security" is Best Safeguarded

"The Subversive Activities Control Act is supposed to be designed to protect this Nation"s "internal security." This case offers another appropriate occasion to point out that the Framers thought (and I agree) that the best way to promote the internal security of our people is to protect their First Amendment freedoms of speech, press, religion and assembly, and that we cannot take away the liberty of groups whose views most people detest without jeopardizing the liberty of all others whose views, though popular today, may themselves be detested tomorrow."

—Mr. Justice Black concurring in the passport case.

Douglas Calls Freedom of Travel Essential to Free Society

"I would not suppose that a Communist, any more than an indigent, could be barred from traveling interstate. I think that a Communist, the same as anyone else, has this right. Being a Communist certainly is not a crime; and while traveling may increase the likelihood of illegal events happening, so does being alive. If, as I think, the right to move freely from State to State is a privilege and immunity of national citizenship (see Edwards v. California, 314 U.S. 160, 178), none can be barred from exercising it, though anyone who uses it as an occasion to commit a crime can of course be punished.

"Free movement by the citizen is of course as dangerous to a tyrant as free expression of ideas or the right of assembly and it is therefore controlled in most countries in the interests of security. That is why riding box cars carries extreme penalties in Communist lands. . . .

"Those with the right of free movement use it at times for mischievous purposes. But that is true of many liberties we enjoy. We nevertheless place our faith in them, and against restraint, knowing that the risk of abusing liberty so as to give rise to punishable conduct is part of the price we pay for this free society.

"War may be the occasion for serious curtailment of liberty. Absent war, I see no way to keep a citizen from traveling within or without the country, unless there is power to detain him. Ex parte Endo, 323 U.S. 283. And no authority to detain exists except under extreme conditions, e.g., unless he has been convicted of a crime or unless there is probable cause for issuing a warrant of arrest by standards of the Fourth Amendment. This freedom of movement is the very essence of our free society, setting us apart. Like the right of assembly and the right of association, it often makes all other rights meaningful—knowing, studying, arguing, exploring, conversing, observing, and even thinking."

—Mr. Justice Douglas concurring in the passport case.

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How Does A Nation Take A Firm Stand, When It Has Nothing Firm to Stand On?

Those Parallels Between Vietnam and Cuba—or Berlin—Are Delusions

Some silly parallels are making headlines and creating new illusions in the Far Eastern crisis. The favorite is with Cuba. The two situations are quite different. In the Cuban crisis, the U.S. threatened war unless the Soviet Union removed its intermediate range nuclear missiles. Khrushchev backed down and took them out. But even if he wanted to, Mao Tse-tung couldn't take the guerrillas out of South Vietnam. He might shut off aid but that wouldn't end the war. The unnamed senior American military adviser who gave that pessimistic off-the-record briefing to the press the day Gen. Harkins left Saigon "said 90% of the guerrillas' weapons" came from the supplies we sent South Vietnam (Reuters in *New York Times*, June 18). It's not the Mao Tse-tung trail; it's the LBJ pipeline that keeps the war going.

Made to Order for Miscalculation

Kennedy's success in the missile crisis was due not only to a limited aim but to his close relations with Moscow. He had met and sized up Khrushchev personally. The two capitals were in touch through normal diplomatic relations. The two heads of State were engaged in a private correspondence which facilitated settlement. But in the Far East we have no listening posts in either Peking or Hanoi, no diplomatic relations, no personal contact between Johnson on the one hand and Mao or Ho on the other. On both sides decisions are being made in considerable ignorance of the other. This is a situation made to order for miscalculation.

The parallel with West Berlin is equally deceptive. When a nation takes a stand, it has to know where it's standing. In West Berlin we defend a geographical and political entity. Its people don't want to be swallowed up by the East. Their supply lines to the West were established by agreement of both sides and are clearly marked. The line the Communists cannot cross is unmistakable.

But where is the line in South Vietnam? A substantial part of its people support the rebellion, and see it simply as a continuation of their struggle against the French. Another large portion undoubtedly wish the Americans and the Communists, home-grown or otherwise, would go fight somewhere else. Those who support the Khanh government are few; a Saigon dispatch in the *New York Herald-Tribune* June 21 reports that the Vietcong even collects taxes inside Saigon from contractors working for the U.S. Of all the troubles we don't talk about in Vietnam, the foremost is our fear lest Khanh's government fall to a new neutralist coup from within and expose our political nakedness. We can threaten to bomb Peking and Hanoi all we want to but nothing they (or we) can do will turn Khanh into an Asian Willy Brandt.

As for Laos, that's not a war, it's a chess match, punctuated by occasional artillery blasts. Whichever side blows noisier, the other retreats. Our favorite General, Phoumi Nosavan, seems to be the world's No. 1 military pacifist. We keep his large army (the numbers range up to 70,000) on our payroll but in all the recent fighting on the Plain of Jars, they haven't fired a shot. They've left the fighting if any to Kong Le's split neutralists. The only outcome we can see in Laos is an ultimatum to Ho. Either he puts some fighting men on our side, too, or we bomb Hanoi.

Another Senator Questions the War

"One of the most important assumptions of all which still needs to be tested concerns the very nature of the war itself. Is it indeed a war supplied and directed from Hanoi as our government insists or is it a civil war as many critics have suggested? . . . If we are in fact confronted with a civil war fought under self-contained direction and only incidental outside encouragement, we must start again to ask new questions and test new assumptions. We will need to know if the Viet Cong has a coherent set of political objectives. We will need to know the probable limits of endurance to which the Viet Cong must be pushed before its political objectives can be modified. And we will need to know what possible accommodations can be reached, short of total annihilation of the Viet Cong forces, to resolve the internal conflict. The important thing is that there be no further delay in bringing the tools of diplomacy into full play."

—Sen. Claiborne Pell (D. R.I.), in a speech at a public meeting in Wash., D.C., June 17.

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